

SERVICE DATE – MARCH 12, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35813

FILLMORE & WESTERN FREIGHT SERVICE, LLC—EMERGENCY PETITION FOR
DECLARATORY ORDER

Digest:¹ This decision denies a request that the Board issue a declaratory order finding that actions taken by the Ventura County Transportation Commission, the City of Santa Paula, Cal., and the Santa Paula Branch Line Advisory Committee interfere with the railroad operations of Fillmore & Western Freight Service.

Decided: March 10, 2015

On March 31, 2014, Fillmore & Western Freight Service, Inc. (F&W), filed a petition for declaratory order asking the Board to resolve a dispute involving the use of the Santa Paula Branch Line (Line), a 31.73 mile line of railroad that extends between milepost 403.34 and milepost 435.07 in Ventura County, Cal. The western portion of the Line, from milepost 403.34 to milepost 414.95, is referred to as the Santa Paula Segment. The eastern portion of the Line, from milepost 414.95 to milepost 435.07, is referred to as the Fillmore Segment.²

The Ventura County Transportation Commission (VCTC) owns the Line and has entered into several leases pertaining to its use. Specifically, on June 6, 2001, VCTC and the City of Fillmore Redevelopment Agency (FRDA) (now the City of Fillmore as successor agency) entered into a lease for the Fillmore Segment (FRDA Lease). Under the FRDA Lease, the FRDA was permitted to use the Fillmore Segment only for “public/tourist excursion” purposes. On June 25, 2001, VCTC and F&W entered into a lease for the Line, from MP 403.35 to MP 435.07 (Direct Lease).³ The Direct Lease gave F&W freight rights for the entire Fillmore Segment, still and motion picture production rights from milepost 405.31 to milepost 435.07,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² According to the Ventura County Transportation Commission (VCTC), the tracks at the eastern end of the Line, between milepost 431.59 and milepost 435.07, were removed several years ago. See VCTC Reply 5.

³ F&W obtained authority from the Board to lease and operate the Line in Fillmore & Western Freight Service, LLC—Lease & Operation Exemption—Ventura County Transportation Commission, FD 34173 (STB served May 3, 2002).

public/tourist excursion rights for the portion of the Santa Paula Segment from milepost 403.35 to milepost 414.45, and mail and express service from milepost 403.35 to milepost 435.07. On July 1, 2001, the FRDA entered into a sublease with F&W in which F&W assumed FRDA's public/tourist excursion operation rights on the Fillmore Segment (FRDA Sublease).

On May 14, 2013, VCTC notified F&W that it would terminate the Direct Lease in December 2013. Also, on May 14, 2013, VCTC notified the FRDA that it was terminating the FRDA Lease in December 2013. In turn, the FRDA notified F&W that it was terminating the FRDA Sublease in December 2013.

Interpretation of the leases governing the use of the Line in general, and the specific issue of whether termination of the Direct Lease and the FRDA Sublease was wrongful, is the subject of two lawsuits currently pending in the Ventura County Superior Court of California. On March 6, 2014, VCTC filed an unlawful detainer suit against F&W. In its suit, VCTC seeks to evict F&W from the terminated FRDA Sublease. See Complaint for Unlawful Detainer, Ventura Cnty. Transp. Comm'n v. Fillmore & W. Ry., Case No. 56-2014-00449769 (Cal. Super. Ct. filed March 6, 2014).⁴ On March 17, 2014, F&W filed a suit against VCTC, arguing, among other things, that VCTC breached its contracts with F&W by terminating the Direct Lease and the FRDA Sublease. See Complaint for Breach of Contract, Fillmore & W. R.R. v. Comm'rs of the Ventura Cnty. Transp. Comm'n, Case No. 56-2014-00450239 (Cal. Super. Ct. filed March 17, 2014).

On March 31, 2014, F&W filed a petition for declaratory order asking the Board to find that VCTC, the City of Santa Paula, and the Santa Paula Branch Line Advisory Committee have unlawfully interfered with F&W's railroad operations. F&W maintains that it has authority to provide both freight operations and intrastate passenger excursion operations over the entire Line and that cancellation of the Direct Lease and the FRDA Sublease, without subsequent approval by the Board, is ineffective. F&W argues that 49 U.S.C. § 10501(b) preempts VCTC's attempt to terminate F&W's rights under the series of agreements at issue in the two state court cases. F&W requests that the Board issue a declaratory order finding that VCTC has unlawfully interfered with F&W's operations and that VCTC's actions are preempted under § 10501(b).

On April 11, 2014, VCTC responded to F&W's petition, arguing in part that the Board should decline to initiate a proceeding because the issues raised by F&W are state law contract issues that should be resolved by the state court. In the alternative, VCTC contends that the Board should hold this proceeding in abeyance pending the outcome of the two state court proceedings. On April 22, 2014, the City of Santa Paula submitted a letter in opposition to F&W's petition, asserting, among several arguments, that there is no legal issue for the Board to address at this juncture.

⁴ In its response to F&W's petition before the Board, VCTC purports that there are no freight or interstate passenger operations at issue before the state court in its unlawful detainer suit. See VCTC Reply 1.

DISCUSSIONS AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. Here, VCTC and F&W have filed competing state court suits directly pertaining to the issues that F&W has raised before the Board. Issues involving federal preemption under 49 U.S.C. § 10501(b) can be decided either by the Board or the courts in the first instance. See, e.g., 14500 Ltd.—Pet. for Declaratory Order, FD 35788, slip op. at 2 (STB served June 5, 2014); CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 8 (STB served May 3, 2005).

At the request of the parties, the state courts are currently resolving the issue of the scope of rights granted to F&W by the various leases and whether VCTC wrongfully terminated those leases. Given the procedural posture of the state court proceedings, the Board declines to issue a declaratory order at this time. It is not necessary, nor would it be appropriate, for the Board to attempt to interpret the leases governing use of the Line or to attempt to resolve whether termination of the leases was lawful. Those issues are best left to the state courts, and can proceed independently, without the need for a declaratory order from the Board.

Whether a party must cease freight operations is a separate issue, to be determined by the Board. It is well settled that, without abandonment or discontinuance authority from the Board, the enforcement of a state or local order that would prevent operation over a railroad line is precluded. See 49 U.S.C. §§ 10501(b), 10903.⁵ We reaffirm the general principle that any party seeking the abandonment of a rail line, or discontinuance of rail service, must first obtain appropriate authority from the Board, see Consol. Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994), notwithstanding any contractual arrangement (or the termination thereof) between parties regarding cessation of rail service or use of a rail line, see Thompson v. Tex. Mexican Ry., 328 U.S. 134 (1946).⁶

There is no need for the Board to issue additional guidance through a declaratory order proceeding at this juncture. Our action here is not intended to prejudice any particular controversy over particular issues in this or any other matter. If necessary, after the state court proceedings have concluded, the parties are free to return to the Board if further clarification on this matter is needed.

This action will not significantly affect either the quality of human environment or the conservation of energy resources.

⁵ Indeed, VCTC acknowledges that it would have to seek adverse discontinuance with the Board to terminate F&W's operating rights over the line, and states its intention to do so after it confirms in state court its right to terminate F&W's leases. See VCTC Reply 2 n.1.

⁶ In Thompson, 328 U.S. at 147, the Supreme Court held that a contract, whether expired by its own terms or terminated by operation of an escape clause, could not affect the ICC's authority. The Court went on to state that "[u]ntil abandonment is authorized, operations must continue." Id.

It is ordered:

1. F&W's petition for declaratory order is denied, and this proceeding is discontinued.
2. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.